

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

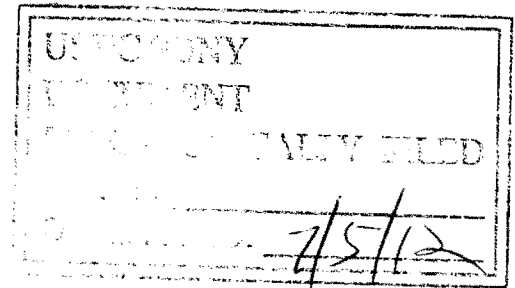
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JAMES HARDY,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.  
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: 11 Civ. 8382 (JSR)  
: 10 Cr. 1123 (JSR)  
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: ORDER  
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JED S. RAKOFF, U.S.D.J.

On March 14, 2012, the Honorable Andrew J. Peck, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending the denial of petitioner's petition filed pursuant to 28 U.S.C. § 2255. Subsequently, on March 28, 2012, petitioner submitted objections to certain portions of the Report and Recommendation. Accordingly, the Court has reviewed the objections and the underlying record de novo.

Having done so, the Court finds itself in complete agreement with Magistrate Judge Peck's Report and Recommendation. Petitioner's chief objection to the Report and Recommendation is that Judge Peck should not have considered the responsive submission received from petitioner's former counsel, whom the petition accused of being ineffective. But it is settled law that a § 2255 petition asserting ineffective assistance waives the attorney-client privilege in all respects relevant to the

petition. See, e.g., Cox v. Donnelly, 387 F.3d 193, 201 (2d Cir. 2004) ("[E]xcept in highly unusual circumstances, the assertedly ineffective attorney should be afforded an opportunity to be heard and to present evidence, in the form of live testimony, affidavits, or briefs.") (internal quotation marks omitted). Accordingly, the Court hereby adopts Judge Peck's Report and Recommendation in full as if incorporated by reference herein, and dismisses the petition with prejudice.

In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Clerk to enter judgment.

SO ORDERED.

  
JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
July 3, 2012